

UNITED STATES COURT OF APPEALS

MAY 16 2005

TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID K. ISHAM,

Defendant - Appellant.

No. 04-8107

(D.C. No. 04-MJ-14-ABJ)

(D. Wyo.)

ORDER

Before **HENRY, McKAY**, and **HARTZ**, Circuit Judges.

During oral argument, with exceptional and commendable candor, counsel for the government conceded that the evidence in this case is insufficient to support Defendant's conviction of being in actual physical control of a motor vehicle while under the influence of alcohol pursuant to 36 C.F.R. § 4.23(a)(1) and moved to remand the case to the district court with directions to dismiss the charge.*

We **GRANT** the government's motion and **REMAND** this case to the district court with directions to dismiss the charge for violation of 36 C.F.R.

*Defendant did not appeal his conviction for firearms, and it, therefore, stands.

§ 4.23 (a)(1).

Entered for the Court

Monroe G. McKay
Circuit Judge